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**OCT 06 2006**

**OFFICE OF PETITIONS**

In re Application of :  
Backes et al. : ON PETITION  
Application No. 10/781,476 :  
Filed: February 18, 2004 :  
Attorney Docket Number: 160-045 :

This is a decision on the Petition to Withdraw Holding of  
Abandonment Pursuant to 37 CFR § 1.181, filed June 12, 2006.

The Petition is **dismissed**.

Any further petition to revive the above-identified application must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181." This is **not** final agency action within the meaning of 5 U.S.C. § 704.

The above-identified application became abandoned for failure to timely and properly reply to the non-final office action, mailed November 2, 2005. The Office action set a three (3) month period for reply, and provided for extensions of time under 37 CFR 1.136(a). No response having been received, the application became abandoned February 3, 2006. A Notice of Abandonment was mailed June 6, 2006.

Applicant files the instant petition and asserts that a response to the Office action was timely filed via facsimile on February 1, 2006. Applicant states in the petition that "the Transmittal letter and Facsimile transmission cover sheet correctly listed the serial number as 09/781476." Petition at p.1. In support of this assertion, applicant files a copy of an Auto Reply Facsimile Transmission from this office indicating receipt by this Office of 11 pages of papers for application serial number 09/781,476 on February 1, 2006.

The above-identified application is 10/781,476, and not 09/781,476. A review of the Auto-Reply Transmission also reveals that the Transmittal Coversheet did not include the filing date of the application, or other indicia, i.e. the inventor, Art Unit or Examiner, that would allow this Office to quickly identify the correct application number.

The MPEP provides that "All correspondence related to a national patent application already filed with the U.S. Patent and Trademark Office must include the identification of the application number or the serial number and the filing date assigned to the application by the Office." See 37 CFR 1.5(a) and MPEP 502.

While "[a] a minor error in the identification of the application can be corrected by the Office provided the correct identification can be quickly discovered", in this instance the application papers did not include the filing date, Art Unit, inventor or Examiner, that would allow this Office to quickly identify the correct application number.

Finally, Applicant is advised that this office has been unable to locate the papers filed on February 1, 2006. Applicant must include the reply in any renewed petition or any petition under 37 CFR 1.137.

Accordingly, the petition is dismissed.

#### Alternative venue

Applicant is strongly urged to file a petition stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in was "unavoidable." An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the required fee, currently \$750.00.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay can not make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement

that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revive under 37 CFR 1.137(b).

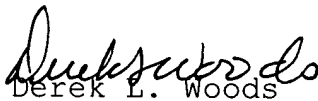
Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents  
PO Box 1450  
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By FAX: (571) 273-8300  
Attn: Office of Petitions

By hand: Customer Service Window  
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Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3232.



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